

DECISION

**THE COMPTROLLER GENERAL
OF THE UNITED STATES**
WASHINGTON, D. C. 20548

31504

FILE: B-217686**DATE:** June 20, 1985**MATTER OF:** Fraudulent Travel Claim**DIGEST:**

1. Agency denied an employee's claim for subsistence expenses, determining that he had misstated his motel expenses because the payments recorded on his receipts were higher than those entered into the motel records. We find that the agency's evidence is insufficient to establish fraud on the part of the employee, but that the employee has not sustained his burden of establishing the Government's liability for motel expenses at the higher rate shown on his receipts. Accordingly, the employee may be reimbursed only for those lodging payments which are documented in the motel records.
2. Agency denied an employee's claim for subsistence expenses, determining that his claim for lodging in a privately owned apartment was of doubtful validity. Although we find that the agency's evidence is insufficient to establish fraud on the part of the employee, the present record does not support payment of his private lodging expenses. Specifically, the employee has not shown that the expenses resulted from a business arrangement or, alternatively, that they reflected additional costs incurred by his host.
3. Employee traveled home on several nonworkdays during his temporary duty assignment, but claimed meal expenses without interruption for this travel. We hold that the employee is not entitled to reimbursement for meal

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costs incurred at home, because the Federal Travel Regulations prohibit payment of subsistence expenses at an employee's official station or residence from which he commutes daily to that station. Since the employee has admitted that he traveled home on several occasions, and he is not entitled to reimbursement, we would not object to disallowance of meal expenses for the nonworkdays based on an average of the employee's daily meal costs.

An employee of the Federal Aviation Administration (FAA) appeals our Claims Group settlement disallowing him actual subsistence expenses based on its determination that his claim for lodging expenses was of doubtful validity. We reverse the settlement, finding insufficient evidence that the employee fraudulently misstated expenses for commercial and private lodgings. However, we hold: (1) that the employee may receive only partial reimbursement for his motel expenses; (2) that the employee may not be reimbursed for private lodging expenses based on the present record; and (3) that he may not be allowed meal expenses for non-workdays on which he returned to his official duty station.

GENERAL BACKGROUND

The subject employee is a Supervisory Air Traffic Control Specialist permanently stationed in Leesburg, Virginia. During the air traffic controllers' strike in 1981, he and a number of other controllers stationed in Leesburg were assigned to temporary duty at the New York Air Route Traffic Control Center in Islip, New York. The subject employee's detail in New York extended from August 22 to December 4, 1981.

For several days at the beginning of his assignment, the subject employee stayed in a motel and claimed lodging expenses of \$44 per day. Subsequently, he moved into a privately owned apartment where he allegedly paid \$40 per day for the duration of his assignment. After the employee and other controllers submitted their vouchers for subsistence expenses, the FAA questioned the high amounts

they had claimed for noncommercial lodgings. Consequently, the FAA launched an investigation into the travel expenses claimed by 12 controllers, including the subject employee.

Based on its investigation, discussed more fully below, the FAA determined that the subject employee fraudulently misstated his motel expenses because his receipts indicated payment of amounts higher than those entered into the motel's records. Also, the agency found that the employee's claim for private lodging expenses was of doubtful validity because its investigators were unable to verify payment of the amounts stated on his receipts. Consequently, the agency determined that the employee was not entitled to retain subsistence expenses for any day of his temporary duty assignment, and it requested him to repay those expenses in the total amount of \$7,605.93.

Subsequently, the FAA initiated disciplinary proceedings against the employee. The agency proposed a 30-day suspension, based on two charges: (1) that the employee had falsified the motel receipts; and (2) that he had fraudulently claimed meal expenses for nonworkdays on which he had returned to his official duty station. After withdrawing the latter charge, the agency suspended the employee for 5 days based on his alleged falsification of motel receipts. Later, a grievance examiner reversed the 5-day suspension, finding insufficient evidence that the employee had falsified the motel receipts.

The FAA forwarded the employee's claim for subsistence expenses to our Claims Group, posing the following questions: (1) whether all or part of the disallowed subsistence expenses could be paid to the employee; (2) if so, whether his expenses for lodging in a private residence could be reduced to a reasonable monthly amount, based on "existing real estate market conditions;" and (3) whether the agency may disallow meal expenses for nonworkdays on which the employee traveled home, based on the average daily meal cost he incurred.

Our Claims Group answered the FAA's first question in the negative, finding that the employee's claim for lodging

expenses was of doubtful validity. Consequently, our Claims Group did not reach the agency's additional questions.

The subject employee has appealed our Claims Group settlement, contending that the FAA has not sustained its burden of establishing that he fraudulently claimed motel expenses or noncommercial lodging costs. Further, the employee contends that he claimed meal expenses for his nonworkday travel in good faith, and that those expenses are reimbursable.

DISCUSSION

This Office does not conduct hearings on allegedly fraudulent claims, but relies solely on evidence contained in the written record. See 4 C.F.R. § 31.7 (1984). In deciding whether the written record establishes fraud which will support either the denial of a claim or recoupment action in the case of a paid voucher, our Office has observed that:

"* * * the burden of establishing fraud rests upon the party alleging the same and must be proven by evidence sufficient to overcome the existing presumption in favor of honesty and fair dealing. Circumstantial evidence is competent for this purpose, provided it affords a clear inference of fraud and amounts to more than suspicion or conjecture. However, if, in any case, the circumstances are as consistent with honesty and fair dealing as with dishonesty, the inference of honesty is required to be drawn." Charles W. Hahn, B-187975, July 28, 1977.

Accordingly, we will apply the Hahn standard in evaluating the record before us.

Motel Expenses

As indicated previously, the employee claimed expenses for residing in a motel during the period August 22 to August 26, 1981. He paid the motel charges in cash, and

submitted receipts for August 23, 24, and 26, showing payments of \$44 per day. Apparently, the employee was unable to furnish receipts for August 22 and 25.^{1/}

Agency investigators examined the motel's payment records and registration cards, and found that there was no record of the employee's registration or payment on August 22, that payments of \$35 per day were recorded for August 23 to August 25, and that a payment of \$30 was recorded on August 26. The investigators interviewed motel clerks who acknowledged their initials on two of the employee's receipts, but stated that there was a discrepancy between the \$44 amounts recorded on the receipts and the lesser amounts entered into the motel records.

The employee argues that the evidence collected by the FAA does not establish an inference of fraud, for the following reasons: (1) although the clerks interviewed by FAA pointed to a discrepancy between the employee's receipts and the motel's records, they did not dispute that the receipts were genuine and reflected amounts actually paid by the employee; (2) room rates were not posted in the motel, and the motel's payment record for any given day shows that various rates were charged for the same type of accommodations; (3) the motel's records are handwritten, subject to manipulation, and therefore unreliable; and (4) although the motel's record for August 22 does not show the employee's registration on that date, the record covers only those registrations between midnight and 8 a.m.; furthermore, although it is not disputed that the employee stayed at the motel on August 23, there is no record of his registration on that date. The employee adds that the motel engaged in unusual practices during his stay, requiring him to check out each morning and reregister at night. He explains that he stayed in the motel based on FAA management's advice that the detailed controllers secure remote lodgings in order to avoid confrontations with the striking controllers.

^{1/} The employee explains that he left those receipts in his car, which was stolen during the temporary duty assignment.

Additionally, the employee has submitted the grievance examiner's decision reversing his 5-day suspension for alleged falsification of the motel receipts. The grievance examiner found insufficient evidence of falsification, determining that the motel clerks' statements were inconclusive and that the motel records contained numerous inconsistencies.

Considering the record as a whole, and the grievance examiner's findings, we believe that the FAA's evidence is insufficient to establish a clear inference of fraud on the part of the employee. In particular, we note that although the motel clerks interviewed by FAA pointed to discrepancies between the employee's receipts and the motel records, they acknowledged their initials on two of the receipts and did not deny that they filled in the \$44 figures.

However, even in the absence of specific proof of wrongdoing on the part of an employee, we have held that the employee must produce evidence which satisfactorily establishes the Government's liability for his expenses. See Raymond Eluhow, B-198438, March 2, 1983, citing 4 C.F.R. § 31.7. In this case, we find that the employee has not convincingly demonstrated that he is entitled to reimbursement for motel expenses at the rate of \$44 per day. Since the employee paid the motel charges in cash, the record does not contain any canceled checks or credit card receipts which would document the claimed payments. Furthermore, the motel's registration cards and payment records show that the motel received no payment from the employee on August 22, that it received payments of \$35 per day for the period August 23 to 25, and that it received a \$30 payment on August 26.

Since the employee has not submitted a receipt for August 22, and the motel records for that date do not evidence his registration or payment, the employee may not recover any lodging expenses claimed for that day. However, the employee may be reimbursed for lodging expenses of \$35 per day for August 23 to August 25, and \$30 for August 26, since, at a minimum, he paid the amounts stated in the motel records. See Eluhow, cited above. Additionally, he may recover meal costs and miscellaneous subsistence expenses claimed for the period August 22 to August 26, provided the FAA determines that the claimed expenses are proper.

Private Lodging Expenses

During the period August 27 through December 4, 1981, the employee stayed in an apartment which he allegedly rented from a friend of his brother. He paid the rental charges in cash, and submitted signed receipts showing payment at the rate of \$40 per day.

The FAA's investigators attempted to verify the employee's receipts, but were unable to locate the individual who had signed them. They conducted an interview with the individual's wife, who confirmed the lodging arrangement but was unable to verify the rental charges.

The employee maintains that the FAA's inability to verify his payments does not, in itself, provide a basis for disallowing all the subsistence expenses he incurred between August 27 and December 4, 1981. He states that he provided lodging receipts in accordance with the requirements of the Federal Travel Regulations para. 1-8.5, incorp. by ref., 41 C.F.R. § 101-7.003 (1983) (FTR), and, therefore, that he is entitled to full reimbursement for his expenses.

As stated previously, an agency must substantiate an allegation of fraud with evidence sufficient to overcome the presumption of honesty and fair dealing on the part of the employee. In this case, we do not believe that the agency's inability to verify payments stated on the employee's receipts supports an inference of fraud. The agency does not dispute that the receipts are genuine, and the wife of the individual who signed the receipts confirmed the lodging arrangement. Accordingly, absent evidence of wrongdoing on the part of the employee, we hold that he is entitled to be reimbursed for subsistence expenses on each day he lodged in the private residence.

However, the amount payable for the employee's noncommercial lodgings is limited by FTR para. 1-8.5, which permits reimbursement only for those subsistence expenses which an employee actually incurs. When an employee lodges at a commercial facility such as a motel, a receipt furnished in the ordinary course of business is usually sufficient to establish that the expense was incurred. Where, however, an employee occupies noncommercial facilities, a receipt given by an individual other

than in the ordinary course of business may not be sufficient evidence to establish that the payment was required or that the amount was reasonable. See Herman Zivetz, B-213868, July 12, 1984.

If an employee can demonstrate that he rented noncommercial lodgings through an arms-length business transaction, then we will allow lodging expenses at the claimed rate. The best evidence of a purely business arrangement is evidence that the home or apartment owner customarily rents out his residence at an established price. See Andres Tobar, B-209109, December 15, 1982; and Constance A. Hackathorn, B-205579, June 21, 1982.

In the absence of evidence that a noncommercial lodging arrangement resulted from a business transaction, we have presumed that the lodgings were furnished as a personal accommodation to the employee. See Tobar and Hackathorn, above. Where lodgings are provided as a personal accommodation, we have held that payable claims must be considerably less than charges for commercial accommodations and correlated with expenses actually incurred by the host. The applicable rule, developed in the context of lodgings provided by friends and relatives, is set forth in 52 Comp. Gen. 78, 82 (1972), as follows:

"* * * It does not seem reasonable or necessary to us for employees to agree to pay relatives the same amounts they would have to pay for lodging in motels or meals in restaurants or to base such payments to relatives upon maximum amounts which are reimbursable under the regulations. Of course, what is reasonable depends on the circumstances of each case. The number of individuals involved, whether the relative had to hire extra help to provide lodging and meals, the extra work performed by the relative and possibly other factors would be for consideration."

The record before us does not contain the required evidence that the employee entered into a business arrangement with the apartment owner or, alternatively, evidence that the apartment owner incurred additional costs as a

result of the employee's stay. Consequently, the employee has not met his burden of proving the Government's liability for his lodging expenses. See 4 C.F.R. § 31.7. Accordingly, the employee's claim for noncommercial lodging expenses at the rate of \$40 per day may not be allowed on the basis of the present record.

Nonworkday Travel

During the air traffic controllers' strike, commercial airlines offered controllers temporarily stationed in New York round-trip travel to their homes, without charge to the Government or the employees. The agency determined that the subject employee traveled home on several nonworkdays, but could not identify the dates. Although the employee admitted that he traveled home on 2 or 3 nonworkdays between August 22 and December 4, 1981, he stated that he could not recall the dates of the trips.

In reviewing the employee's travel voucher, the agency noted that he claimed meal expenses continuously without interruption for the nonworkdays he traveled home. The agency charged him with fraudulently claiming meal expenses on vouchers dated October 22, 1981, and January 22, 1982, but later withdrew those charges. Now, the agency questions whether it may deny the employee's meal expenses for the unidentified nonworkdays he traveled home, based on the average daily meal cost he incurred during his assignment.

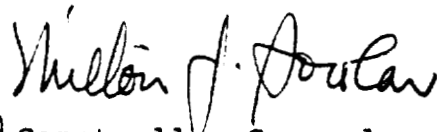
The employee maintains that he claimed meal expenses during his trips home in good faith, based on the following: (1) he actually did incur meal expenses during the trips because he had closed his home for the duration of the temporary duty assignment; and (2) it appears that he is entitled to such expenses under FTR para. 1-8.4f, which provides that a traveler who voluntarily returns home on nonworkdays may be reimbursed for round-trip transportation and subsistence expenses en route, not to exceed the subsistence and travel expenses he would have incurred had he remained at his temporary duty station.

We find that the employee may not be reimbursed for meal expenses on the days he returned home, even though he may have claimed those expenses in good faith. Under

FTR para. 1-8.4f, cited by the employee, a traveler who voluntarily returns home on nonworkdays may be reimbursed only for his round-trip transportation costs and subsistence expenses en route, not to exceed his constructive travel and subsistence expenses at the temporary duty site. See B-176706, October 13, 1972. Also, the provisions of FTR para. 1-7.6a preclude payment of per diem or subsistence expenses at an employee's official duty station or residence from which he commutes daily to that station, even if unusual circumstances are involved. See generally Philip Rabin, B-215586, November 14, 1984, 64 Comp. Gen. 70.

The employee has admitted that he traveled home on 2 or 3 nonworkdays during the period in question. Although the FAA cannot identify the dates of that travel, it is required by the above-cited rules to disallow the employee's meal expenses for the days he returned home. Accordingly, we would not object to disallowance of the employee's meal expenses for the days he admits he returned home, based on the average daily meal expenses he claimed during the temporary duty assignment.

For the reasons stated above, we reverse our Claims Group's determination that the employee's claim for lodging expenses was of doubtful validity. The employee's claim for subsistence expenses should be settled in accordance with the foregoing.

for 
Comptroller General
of the United States